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In re Application of  
JAFFE :  
Application No. 10/668,424 :  
Filed: September 22, 2003 :  
Attorney Docket No. 0224E :

DECISION ON PETITION  
OFFICE OF PETITIONS

This is a decision on the petition under 37 CFR 1.137(b), filed August 17, 2005, to revive the above-identified application.

The petition is **GRANTED**.

The above-identified application became abandoned for failure to reply in a timely manner to a Notice to File Missing Parts of Nonprovisional Application mailed October 18, 2004, which set a period for reply of two (2) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on December 19, 2004.

The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of a properly executed declaration, a late declaration surcharge fee of \$65, and replacement drawings in compliance with 37 CFR 1.84 and 37 CFR 1.121; (2) the petition fee of \$750; and (3) the required statement of unintentional delay have been received. Accordingly, the reply to the Notice to File Missing Parts of Nonprovisional Application of October 18, 2004 is accepted as having been unintentionally delayed.

Some confusion exists relating to the papers filed with the above-identified application. Applicant asserts a signed declaration dated April 12, 2004 was purportedly submitted with the filing of the above-identified application<sup>1</sup> and replacement drawings were purportedly submitted with the above-identified application on December 10, 2004. In actuality, two applications (10/668,424 and 10/943,467) were filed with the Office, naming Herbert Jaffe as the inventor. The postcard receipts provided with the petition dated "12-10-04" and "01-18-05" are labeled with U.S. Application No. 10/943,467 and not the above-identified application. As such, the declaration and drawings discussed in the petition were filed with another application and are not responsive to the Notice mailed with the above-identified application on October 18, 2004.

Since the above-identified application is not a utility or plant application filed before June 8, 1995, a terminal disclaimer pursuant under 37 CFR 1.137(d) dedicating to the public a terminal part of the term of any patent granted on the application or any patent granted on any continuing application that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the application is not required with the petition. In addition, the disclaimer fee of \$130 (\$65 if small entity) is not required. A refund of the \$65 fee will be credited to the petitioner in the form of a Treasury Check.

Telephone inquiries concerning this decision should be directed to Denise Pothier at (571) 272-4787.

The application matter is being forwarded to Office of Initial Patent Examination.

*Frances Hicks*  
Frances Hicks

Petitions Examiner  
Office of Petitions

<sup>1</sup> The date in the declaration (4/12/04) is nearly seven months after the filing date of the above-identified application.